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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

S.W.,

Petitioner,

v.

THE SUPERIOR COURT OF
RIVERSIDE COUNTY,

Respondent;

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Real Party in Interest.

E060429

(Super.Ct.No. INJ1200432)

OPINION

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Lawrence P. Best,
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Petition denied.

Michael P. Vollandt for Petitioner.

No appearance for Respondent.

Pamela J. Walls, County Counsel, Julie Koons Jarvi, Deputy County Counsel, for Real Party in Interest.

Petitioner S.W., the father of minors M.W. and N.W., seeks review by way of extraordinary writ from orders terminating reunification services and setting a selection and implementation hearing pursuant to Welfare and Institutions Code section 366.26.¹ He asserts that the trial court should have continued the 12-month hearing so that he could complete the reunification process. We find no error and deny the petition.

STATEMENT OF FACTS

On August 10, 2012, the Department of Public Social Services (the Department) filed a jurisdictional petition based on a referral for general neglect. More specifically, the referral indicated that both parents used methamphetamine and that there was domestic violence in the home. The minors were four and one-half years old (M.W.) and nineteen months of age (N.W.). The Department took custody of the minors on August 8.

When contacted, Mother reported that she had left Father in Arizona after an incident in which he held a gun to her head, and was seeking a restraining order against him. Mother also admitted smoking methamphetamine in the morning to “relax” and smoking marijuana in the evening to “mellow herself out” so she would not become irritated with the minors. She also stated that Father used and sold drugs.

¹ All subsequent statutory references are to the Welfare and Institutions Code.

When contacted a few days later, Father said he had left Mother due to her “heavy” drug use and also stated that he was worried for the children’s sake concerning some of the fellow drug users Mother allowed in the home. He did not take the children with him because he thought Mother would have him arrested. He also told the social worker that he and Mother had agreed to give custody of the children to his mother, but that Mother was now trying to “hide” the children.

M.W. also told the social worker that Mother was afraid of Father due to his threats and that she had witnessed Father putting a gun to Mother’s head.

On November 5, 2012, the court made jurisdictional findings, ordered that the minors remain in placement, and ordered reunification services. By that time Father had already begun a parenting class and was participating in an anger management group.

The six-month report was filed on April 17, 2013. With respect to Father² it reflected that he was employed and residing in his mother’s home. His drug tests were consistently negative. He was reported to have participated “enthusiastically” in 12 sessions of anger management counseling. He had completed a parenting class and the group facilitator reported that he “often” integrated the information taught into his own life and ““made good efforts too [sic]’ do so.”³ He had entered counseling although his therapist told the social worker that over six sessions, he had not mentioned Mother or

² We do not detail Mother’s participation as she is not a party to this petition.

³ The social worker appears to consider these comments as a negative.

the reasons for the dependency proceedings. The goals of this therapy were to reduce Father's "emotional outbursts" as well as his feelings of depression about "what he has done that has affected his relationships with his children." However, Father had not yet told the therapist just "what he has done." Father was attending Narcotics Anonymous (N.A.) and had a sponsor. Father had been consistent in visits, which generally went well. However, the social worker noted that he sometimes ignored the younger child, N.W., who would become angry, and that on one occasion he spent 15 minutes using his phone rather than interacting with the minors. It was also noted that M.W. sometimes asked Father inappropriate questions such as what would he do if she cut off one of his arms.⁴

Overall, the social worker felt that Father had made "substantial progress" and recommended continued services. The court so ordered. It also placed the children with Mother under a family maintenance plan.

Slightly over three months later, on September 5, 2013, the Department filed a supplemental petition with respect to Mother in which it was alleged that she was placing the minors in danger by having drunk alcohol and moved without informing the Department. She was currently permitting "Mike" to watch the children, although he had a criminal background including domestic violence and inappropriate contact with a minor. She and "Mike" thereafter had a "physical confrontation," and he kicked her out.

⁴ As part of her therapy, M.W. was receiving psychotropic medications.

Mother had also failed to inform the social worker that while she was living with her mother, her mother allowed her son to move back in although he may have molested M.W.

Meanwhile, Father had continued to test negative for drugs. He continued with a therapist and N.A. meetings. However, he admitted that his first marriage ended after a domestic violence incident and that he had been arrested, presumably convicted of some offense, and ordered to complete a 52-week domestic violence program. M.W. told the social worker that she did not want to live with Father because of the domestic violence she had witnessed and because he was mean to her, asserting that he had hit and pushed her. M.W. was also having long tantrums, which appeared to come out of nowhere, as well as frequent nightmares.

The next filing was the social worker's report for the 12-month hearing, filed on October 16, 2013. With respect to Father, it was reported that he remained steadily employed and had an apartment. He was continuing in therapy but remained reticent about actual physical domestic violence, although he admitted "yelling and screaming" and expressed concern as to how this had affected the children.

Father was regularly visiting although the children were somewhat reluctant to interact with him. Father would also leave the children with the person supervising the visit while he walked around the restaurant where it took place and ask the supervising person to help care for the children, even asking this person to put on their shoes and socks. Father also had a tendency to chat with the supervising person about his "personal

matters” while ignoring the children, and seemed to have difficulty with the concept of supervising and managing both children at the same time.

The social worker acknowledged Father’s efforts but noted the failure to address domestic violence in therapy, and also that Father seemed to consider his therapy sessions simply as an opportunity to “vent.” The recommendation in this report was that services be terminated as to both parents.

In an addendum filed December 3, 2013, the social worker reported that Father, who had previously minimized his substance abuse, had discussed much more serious involvement with his therapist and asserted that he had now “seen the error of his ways.” He had also finally admitted physical abuse and the incident in which he pointed a gun at Mother, but avoided the question of who was to blame for the incident. He believed that he could adequately address the domestic violence issues in six weeks. His therapist told the social worker that Father needed to work on parenting issues, although he had completed the required class. According to the therapist, Father needed to work on not being abrasive and demanding, and learning to be consistent and how to interact with children.

The hearing was held on December 6, 2013, and January 16, 2014. There was extensive testimony.⁵ On Father’s side, he detailed what he had learned about managing anger and the “danger signals.” He denied ever pointing a gun at Mother or physically

⁵ Which neither party summarizes in any detail whatsoever.

assaulting her. He indicated that he thought his therapy was beneficial and wished to continue it. Family members and friends testified to the changes he was making and his positive interactions with the children.

Following the end of testimony, the trial court spoke with counsel as to whether there was anything that could be done to “salvage this.” The Department stressed that the case was now at 17 months from detention. The court confirmed that “I’m not in any way prepared to place with either parent today. So are we out of options?” The social worker responded, “[t]ime.” Father’s counsel asked that he be given the “opportunity, and whatever name it needs to be hung to let them do something within the next six months.” He specifically did not seek placement, but “some more time.” When the trial court asked for legal authority, counsel could not provide any. The trial court ordered services terminated as to both parents.

DISCUSSION

In this petition Father argues that despite counsel’s failure to so argue,⁶ the trial court should have sua sponte considered whether to continue the hearing under section 352. We need not decide whether the trial court had an obligation to make

⁶ Trial counsel is also counsel for this petition. Hence, he is implicitly (although not expressly) arguing his own ineffectiveness. For this reason we do not decide the case based on waiver, but discuss the merits that any such request for continuance would have had.

Father's case for him,⁷ as it would have been an abuse of discretion to have granted a continuance in any event.

Section 352 allows the court “[u]pon request of counsel for the parent, guardian, minor, or petitioner” to continue “any hearing under this chapter beyond the time limit within which the hearing is otherwise required to be held, provided that no continuance shall be granted that is contrary to the interest of the minor.” A showing of good cause is required.

The granting of continuances in juvenile dependency matters is disfavored. (*In re David H.* (2008) 165 Cal.App.4th 1626, 1635.) This is especially true where a statutory time limit such as the 18-month limit on reunification services (§ 361.5, subd. (a)(2)(c)) is implicated. (*In re Elijah V.* (2005) 127 Cal.App.4th 576, 585.) While it is true that it has been recognized that section 352 grants the court the ability to disregard these time limits and order additional services, such a power exists only when reasonable services have not been provided to the parent. (See *Renee J. v. Superior Court* (2002) 96 Cal.App.4th 1450, 1464.)

In this case, by contrast, there is no contention that reasonable services were not provided to Father. The court simply concluded (and counsel evidently agreed) that Father had failed to benefit from the services to an extent that would allow the minors, or either of them, to be placed with him. As all parties realized, by the time the January

⁷ The court *did* have the *authority* to grant a continuance on its own motion. (*In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1798.)

hearing was concluded, just over 17 months had elapsed since the removal of the minors. (See § 361.5, subd. (a)(2)(C) [starting the 18-month outside period from the date of removal].) It would not have been reasonable for the court to have concluded that a few more weeks would allow Father to establish his ability to safely and effectively parent the children.

Hence, section 352 was not available as a mechanism to provide Father with additional reunification time and services.

DISPOSITION

The petition is denied.

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HOLLENHORST
Acting P. J.

We concur:

KING
J.

MILLER
J.